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A New Approach to Regulating Tobacco Use (/full-blog/2014/02/a-new-approach-to-regulating-tobacco-use.html)



(<https://static.squarespace.com/static/53fe85a0e4b0516a0c4fed1a/54002444e4b0123f9872f024/54002445e4b0123f9872f055/1409295429628/1000w/>)

Image Source (<http://health.hawaii.gov/tobacco/home/youth-smoking/>)

By: Jake Thompson, Staff Member

In New York City, tobacco users will be facing a new tobacco ordinance, which will go into effect March 19, 2014.[i]

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This ordinance contains many parts and new requirements that include, among other things, higher fines for illegal tobacco sales and even a price floor on a pack of cigarettes of \$10.50.[ii]

(file:///C:/Users/Jeremy/AppData/Local/Temp/Thompson%20Blog%201%20Post%20.doc#_edn2)

On the same day this ordinance was passed, another ordinance was also passed, which increased the minimum age for purchasing tobacco products from 18 to 21.[iii]

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Surprisingly, however, none of these restrictions have drawn the ire of store owners and tobacco companies as much as a part of the ordinance that basically bans the use of coupons and promotional discounts for tobacco products, as evidenced by a lawsuit challenging this latter requirement of the ordinance but not any of the other requirements.[iv]

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Interestingly, while the price floor only applied to cigarettes, the ban on coupons applied to all tobacco products.[v]

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Challenging the ordnance alongside a slew of tobacco companies are the New York Association of Convenience Stores and the Bodega Association of the United States.[vi]
(file:///C:/Users/Jeremy/AppData/Local/Temp/Thompson%20Blog%201%20Post%20.doc#_edn6)
They are challenging the so-called “coupon ban” on the grounds that the ban violates the First Amendment rights of the plaintiffs by limiting their ability to communicate truthful and lawful discount information about their products to their customers.[vii]
(file:///C:/Users/Jeremy/AppData/Local/Temp/Thompson%20Blog%201%20Post%20.doc#_edn7)
While noting that these grounds alone should be sufficient to strike down the ordinance, the plaintiffs further argue that the Federal Cigarette Labeling and Advertising Act and other state law preempt the ordinance.[viii]
(file:///C:/Users/Jeremy/AppData/Local/Temp/Thompson%20Blog%201%20Post%20.doc#_edn8)
The argument is basically that the Federal and state laws already regulate the sale of tobacco products, and promotions and these existing laws take precedence over local laws that might be passed, including laws that impose broader restrictions.[ix]
(file:///C:/Users/Jeremy/AppData/Local/Temp/Thompson%20Blog%201%20Post%20.doc#_edn9)

While some might be inclined to dismiss the lawsuit as just another example of tobacco companies protecting their bottom line, it must be remembered that in this lawsuit, neither the price floor on cigarettes nor the minimum age increase have been challenged.[x]
(file:///C:/Users/Jeremy/AppData/Local/Temp/Thompson%20Blog%201%20Post%20.doc#_edn10)
) The plaintiffs, which, again, include convenience store trade associations, are only trying to protect what they believe is a constitutional right. Further, as a more practical matter, tobacco users in the year 2014 are certainly aware of the plethora of studies touting the harmful effects of all tobacco use in all of its forms. Tobacco users also are faced with fewer and fewer places across the country that even allow smoking or the use of smokeless tobacco. If users continue to consciously make the choice to purchase and use tobacco products, should it really be a government prerogative to prevent them from using a coupon to purchase a can of snuff or a \$10.50 pack of cigarettes?

[i] (file:///C:/Users/Jeremy/AppData/Local/Temp/Thompson%20Blog%201%20Post%20.doc#_ednref1) Greg Ryan, Tobacco Companies Sue NYC to Kill Coupons, Discount Ban, Law360.com (Jan. 31, 2014, 6:36 PM), <http://www.law360.com/articles/505922/tobacco-companies-sue-nyc-to-kill-coupon-discount-ban>.
[ii] (file:///C:/Users/Jeremy/AppData/Local/Temp/Thompson%20Blog%201%20Post%20.doc#_ednref2) Id.
[iii] (file:///C:/Users/Jeremy/AppData/Local/Temp/Thompson%20Blog%201%20Post%20.doc#_ednref3) Id.
[iv] (file:///C:/Users/Jeremy/AppData/Local/Temp/Thompson%20Blog%201%20Post%20.doc#_ednref4) Id.
[v] (file:///C:/Users/Jeremy/AppData/Local/Temp/Thompson%20Blog%201%20Post%20.doc#_ednref5) Tobacco Companies Sue to Block NYC Law Banning Cigarette Coupons, Discounts, The Republic (Jan. 30, 2014, 5:40 PM), <http://www.therepublic.com/view/story/1497E9c14c149499b7dcecf67d69E5/US--NYC-Cigarette-Prices>
[vi] (file:///C:/Users/Jeremy/AppData/Local/Temp/Thompson%20Blog%201%20Post%20.doc#_ednref6) Charlie Minato, Press Release: NATO Files Lawsuit Over New York City Over Tobacco Discount Law, Halfwheel.com (Jan. 30, 2014), <http://halfwheel.com/press-release-nato-injunction-new-york-city-over-tobacco-discount-law>
[vii] (file:///C:/Users/Jeremy/AppData/Local/Temp/Thompson%20Blog%201%20Post%20.doc#_ednref7) Ryan, *supra* note 1.
[viii] (file:///C:/Users/Jeremy/AppData/Local/Temp/Thompson%20Blog%201%20Post%20.doc#_ednref8) Id.
[ix] (file:///C:/Users/Jeremy/AppData/Local/Temp/Thompson%20Blog%201%20Post%20.doc#_ednref9) Id.
[x] (file:///C:/Users/Jeremy/AppData/Local/Temp/Thompson%20Blog%201%20Post%20.doc#_ednref10) Id.

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